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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation
Against:

ESTHER BUMACOD
12618 Knights Bridge Place
Bakersfield, CA 93312

Physical Therapist License No. PT 12164

Respondent.

Case No. 1D 2004 63921

**FIRST AMENDED
ACCUSATION**

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this First Amended Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about June 8, 1984, the Physical Therapy Board of California issued Physical Therapist License Number PT 12164 to ESTHER BUMACOD (Respondent). The Physical Therapist License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2007, unless renewed.

JURISDICTION

3. This First Amended Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the

1 following laws. All section references are to the Business and Professions Code (Code) unless
2 otherwise indicated.

3 4. Section 2609 of the Code states:

4 “The board shall issue, suspend, and revoke licenses and approvals to practice
5 physical therapy as provided in this chapter.”

6 5. Section 2620.7 of the Code states:

7 (a) A physical therapist shall document his or her evaluation, goals,
8 treatment plan, and summary of treatment in the patient record.

9 (b) A physical therapist shall document the care actually provided to a
10 patient in the patient record.

11 (c) A physical therapist shall sign the patient record legibly.

12 (d) Patient records shall be maintained for a period of no less than seven
13 years following the discharge of the patient, except that the records of
14 unemancipated minors shall be maintained at least one year after the minor has
15 reached the age of 18 years, and not in any case less than seven years.

16 6. Section 2660 of the Code states:

17 “The board may, after the conduct of appropriate proceedings under the
18 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose
19 probationary conditions upon any license, certificate, or approval issued under this chapter for
20 unprofessional conduct that includes, but is not limited to, one or any combination of the
21 following causes:

22 “(a) Advertising in violation of Section 17500.

23 “(b) Fraud in the procurement of any license under this chapter.

24 “(c) Procuring or aiding or offering to procure or aid in criminal abortion.

25 “(d) Conviction of a crime which substantially relates to the
26 qualifications, functions, or duties of a physical therapist or physical therapy
27 assistant. The record of conviction or a certified copy thereof shall be conclusive
28 evidence of that conviction.

1 “(e) Impersonating or acting as a proxy for an applicant in any
2 examination given under this chapter.

3 “(f) Habitual intemperance.

4 “(g) Addiction to the excessive use of any habit-forming drug.

5 “(h) Gross negligence in his or her practice as a physical therapist or
6 physical therapy assistant.

7 “(i) Conviction of a violation of any of the provisions of this chapter or of
8 the State Medical Practice Act, or violating, or attempting to violate, directly or
9 indirectly, or assisting in or abetting the violating of, or conspiring to violate any
10 provision or term of this chapter or of the State Medical Practice Act.

11 “(j) The aiding or abetting of any person to violate this chapter or any
12 regulations duly adopted under this chapter.

13 “(k) The aiding or abetting of any person to engage in the unlawful
14 practice of physical therapy.

15 “(l) The commission of any fraudulent, dishonest, or corrupt act which is
16 substantially related to the qualifications, functions, or duties of a physical
17 therapist or physical therapy assistant.

18 “(m) Except for good cause, the knowing failure to protect patients by
19 failing to follow infection control guidelines of the board, thereby risking
20 transmission of blood-borne infectious diseases from licensee to patient, from
21 patient to patient, and from patient to licensee. In administering this subdivision,
22 the board shall consider referencing the standards, regulations, and guidelines of
23 the State Department of Health Services developed pursuant to Section 1250.11 of
24 the Health and Safety Code and the standards, regulations, and guidelines
25 pursuant to the California Occupational Safety and Health Act of 1973 (Part 1
26 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing
27 the transmission of HIV, Hepatitis B, and other blood-borne pathogens in health
28 care settings. As necessary, the board shall consult with the Medical Board of

1 California, the California Board of Podiatric Medicine, the Board of Dental
2 Examiners of California, the Board of Registered Nursing, and the Board of
3 Vocational Nursing and Psychiatric Technicians, to encourage appropriate
4 consistency in the implementation of this subdivision.

5 “The board shall seek to ensure that licensees are informed of the
6 responsibility of licensees and others to follow infection control guidelines, and of
7 the most recent scientifically recognized safeguards for minimizing the risk of
8 transmission of blood-borne infectious diseases.

9 “(n) The commission of verbal abuse or sexual harassment.”

10 7. Section 2630 of the Code states:

11 “It is unlawful for any person or persons to practice, or offer to practice, physical
12 therapy in this state for compensation received or expected, or to hold himself or herself out as a
13 physical therapist, unless at the time of so doing the person holds a valid, unexpired, and
14 unrevoked license issued under this chapter.

15 “Nothing in this section shall restrict the activities authorized by their licenses on
16 the part of any persons licensed under this code or any initiative act, or the activities authorized
17 to be performed pursuant to Article 4.5 (commencing with Section 2655) or Chapter 7.7
18 (commencing with Section 3500).

19 “A physical therapist licensed pursuant to this chapter may utilized the services of
20 one aide engaged in patient-related tasks to assist the physical therapist in his or her practice of
21 physical therapy. "Patient-related task" means a physical therapy service rendered directly to the
22 patient by an aide, excluding non-patient-related tasks. "Non-patient-related task" means a task
23 related to observation of the patient, transport of the patient, physical support only during gait or
24 transfer training, housekeeping duties, clerical duties, and similar functions. The aide shall at all
25 times be under the orders, direction, and immediate supervision of the physical therapist.
26 Nothing in this section shall authorize an aide to independently perform physical therapy or any
27 physical therapy procedure. The board shall adopt regulations that set forth the standards and
28 requirements for the orders, direction, and immediate supervision of an aide by a physical

1 therapist. The physical therapist shall provide continuous and immediate supervision of the aide.
2 The physical therapist shall be in the same facility as, and in proximity to, the location where the
3 aide is performing patient-related tasks, and shall be readily available at all times to provide
4 advice or instruction to the aide. When patient-related tasks are provided to a patient by an aide,
5 the supervising physical therapist shall, at some point during the treatment day, provide direct
6 service to the patient as treatment for the patient's condition, or to further evaluate and monitor
7 the patient's progress, and shall correspondingly document the patient's record.

8 “The administration of massage, external baths, or normal exercise not a part of a
9 physical therapy treatment shall not be prohibited by this section.”

10 8. Section 2661.5 of the Code states:

11 “(a) In any order issued in resolution of a disciplinary proceeding before
12 the board, the board may request the administrative law judge to direct any
13 licensee found guilty of unprofessional conduct to pay to the board a sum not to
14 exceed the actual and reasonable costs of the investigation and prosecution of the
15 case.

16 “(b) The costs to be assessed shall be fixed by the administrative law
17 judge and shall not in any event be increased by the board. When the board does
18 not adopt a proposed decision and remands the case to an administrative law
19 judge, the administrative law judge shall not increase the amount of the assessed
20 costs specified in the proposed decision.

21 “(c) When the payment directed in an order for payment of costs is not
22 made by the licensee, the board may enforce the order of payment by bringing an
23 action in any appropriate court. This right of enforcement shall be in addition to
24 any other rights the board may have as to any licensee directed to pay costs.

25 “(d) In any judicial action for the recovery of costs, proof of the board's
26 decision shall be conclusive proof of the validity of the order of payment and the
27 terms for payment.

28 “(e) (1) Except as provided in paragraph (2), the board shall not renew or

1 reinstate the license or approval of any person who has failed to pay all of the
2 costs ordered under this section.

3 “(2) Notwithstanding paragraph (1), the board may, in its discretion,
4 conditionally renew or reinstate for a maximum of one year the license or
5 approval of any person who demonstrates financial hardship and who enters into a
6 formal agreement with the board to reimburse the board within that one year
7 period for those unpaid costs.

8 “(f) All costs recovered under this section shall be deposited in the
9 Physical Therapy Fund as a reimbursement in either the fiscal year in which the
10 costs are actually recovered or the previous fiscal year, as the board may direct.”

11 9. California Code of Regulations, title 16, section 1399, states:

12 “A physical therapy aide is an unlicensed person who assists a physical therapist
13 and may be utilized by a physical therapist in his or her practice by performing nonpatient related
14 tasks, or by performing patient related tasks.

15 “(a) As used in these regulations:

16 “(1) A "patient related task" means a physical therapy service rendered directly to
17 the patient by an aide, excluding nonpatient related tasks as defined below.

18 “(2) A "nonpatient related task" means a task related to observation of the patient,
19 transport of patients, physical support only during gait or transfer training, housekeeping duties,
20 clerical duties and similar functions.

21 “(b) "Under the orders, direction and immediate supervision" means:

22 “(1) Prior to the initiation of care, the physical therapist shall evaluate every
23 patient prior to the performance of any patient related tasks by the aide. The evaluation shall be
24 documented in the patient's record.

25 “(2) The physical therapist shall formulate and record in the patient's record a
26 treatment program based upon the evaluation and any other information available to the physical
27 therapist, and shall determine those patient related tasks which may be assigned to an aide. The
28 patient's record shall reflect those patient related tasks that were rendered by the aide, including

1 the signature of the aide who performed those tasks.

2 “(3) The physical therapist shall assign only those patient related tasks that can be
3 safely and effectively performed by the aide. The supervising physical therapist shall be
4 responsible at all times for the conduct of the aide while he or she is on duty.

5 “(4) The physical therapist shall provide continuous and immediate supervision of
6 the aide. The physical therapist shall be in the same facility as and in immediate proximity to the
7 location where the aide is performing patient related tasks, and shall be readily available at all
8 times to provide advice or instruction to the aide. When patient related tasks are provided a
9 patient by an aide the supervising physical therapist shall at some point during the treatment day
10 provide direct service to the patient as treatment for the patient's condition or to further evaluate
11 and monitor the patient's progress, and so document in the patient's record.

12 “(5) The physical therapist shall perform periodic re-evaluation of the patient as
13 necessary and make adjustments in the patient's treatment program. The re-evaluation shall be
14 documented in the patient's record.

15 “(6) The supervising physical therapist shall countersign with their first initial and
16 last name, and date all entries in the patient's record, on the same day as patient related tasks were
17 provided by the aide.”

18 FIRST CAUSE FOR DISCIPLINE

19 (Aiding and/or Abetting the Unlawful Practice of Physical Therapy)

20 10. Respondent is subject to disciplinary action under section 2660,
21 subdivision (k), of the Code in that she engaged in unprofessional conduct by aiding and/or
22 abetting the unlawful practice of physical therapy. The circumstances are as follows:

23 11. During the period beginning on or about June 13, 2004, through on or
24 about December 3, 2004 (Employment Period), Respondent was employed as a physical therapist
25 by Valley Medical Partners (VMP), located at 2204 Q Street, #B, Bakersfield, CA 93301.

26 12. During the Employment Period, respondent provided physical therapy to
27 one or more patients at Valley Medical Partners. During the period beginning in September 2004
28 through October 2004 (Sole PT Period), Respondent was the only physical therapist employed by

1 VMP and worked part-time, generally on Tuesdays and Saturdays.

2 13. Fidel Recio, an unlicensed individual, was an employee of VMP during
3 the Employment Period and performed physical therapy five days a week, Monday through
4 Friday. Fidel Recio engaged in the unlicensed practice of physical therapy during the
5 Employment Period by seeing patients on days when no physical therapist was present at VMP.
6 Recio admitted that he regularly treated patients without the presence of a physical therapist at
7 VMP.

8 14. Respondent admitted that during the Sole PT Period she knew that (a)
9 Fidel Recio was an unlicensed physical therapy aide; (b) physical therapy coverage was being
10 provided at VMP while she was not present at VMP; (c) no one else was signing patient records;
11 and (d) no other physical therapists were working at VMP. Nonetheless, Respondent continued
12 to work part-time at VMP during the Sole PT Period and stated that this was because she was
13 “just trying to help a friend,” and that she did not want the “business to go under.” She said that
14 if she quit, the patients would be without treatment and the other employees would be without
15 jobs.

16 15. With respect to patient C,¹ Respondent's patient was treated for physical
17 therapy by a physical therapy aide on numerous occasions during the Sole PT Period, without any
18 direct supervision of the physical therapy aide, or any direct service to the patient rendered by
19 Respondent.

20 16. With respect to patient D, Respondent's patient was treated on July 2,
21 2004, for physical therapy, and the exercise chart with respect to such treatment does not have a
22 signature.

23 17. With respect to patient E, Respondent's patient was treated by someone on
24 numerous occasions during the beginning of the Employment Period until July 20, 2004.

25 18. As to each of the above-mentioned patients, Respondent failed to properly
26 document the specific services delegated to and provided by the physical therapy aide.

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28 1. All patients are given letters in lieu of their names to protect their privacy. The full names of all patients
will be disclosed to respondent upon a timely request for discovery.

1 19. With respect to patient C, respondent (a) failed to countersign the physical
2 therapist aides' entries in the chart, and (b) failed to ensure that the physical therapy aide properly
3 documented the patient's chart.

4 SECOND CAUSE FOR DISCIPLINE

5 (Aiding and/or Abetting a Violation of the Physical Therapy Practice Act)

6 20. Respondent is subject to disciplinary action under section 2660,
7 subdivisions (i) and (j), of the Code in that she engaged in unprofessional conduct by assisting in,
8 aiding and/or abetting the unlawful practice of physical therapy. The facts and circumstances set
9 forth in paragraphs 11 through 19 of this First Amended Accusation are incorporated herein by
10 reference.

11 THIRD CAUSE FOR DISCIPLINE

12 (Failure to Supervise Physical Therapy Aide)

13 21. Respondent is subject to disciplinary action in that she failed to properly
14 supervise the physical therapy provided by Fidel Recio, an unlicensed physical therapy aide, in
15 violation of section 2630 of the Code and of section 1399 of Title 16 of the California Code of
16 Regulations (Regulations). The facts and circumstances set forth in Paragraphs 11 through 19 of
17 this First Amended Accusation are incorporated herein by reference.

18 FOURTH CAUSE FOR DISCIPLINE

19 (Failure to Properly Document Treatment)

20 11. Respondent is subject to disciplinary action under section 2620.7 of the
21 Code in conjunction with California Code of Regulations Title 16, section 1399, in that she failed
22 to properly supervise a physical therapy aide by ensuring proper documentation of treatment.
23 The facts and circumstances set forth in Paragraphs 11 through 19 of this First Amended
24 Accusation are incorporated herein by reference.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

- 1. Revoking or suspending Physical Therapist License Number PT 12164, issued to ESTHER BUMACOD;
- 2. Ordering ESTHER BUMACOD to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.3;
- 3. Taking such other and further action as deemed necessary and proper.

DATED: September 26, 2006

Original Signed By:
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant